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REMARKS

Applicants respectfully request the Examiner's consideration of the accompanying Information Disclosure Statement.

1. Nonstatutory Obviousness-Type Double Patenting

Applicants respectfully traverse the provisional nonstatutory obviousness-type double patenting rejection of claims 1-39 over claims 1-28 of copending Application No. 10/612,396 at page 3 of the Office Action of May 8, 2006 ("the Office Action") and over claims 1-16 of copending Application No. 10/838,112 at page 5 of the Office Action. The rejection is procedurally improper and should be withdrawn.

MPEP § 804.1(B) states in pertinent part:

"The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in at least one of the applications."

Because the only remaining rejection is the provisional nonstatutory obviousness-type double patenting rejection, Applicants request the rejection be withdrawn and the present Application allowed as required under MPEP § 804.1(B). As outlined below, Applicants believe the present Application should be allowed without a terminal disclaimer to either cited Application.

A. A Terminal Disclaimer is Not Required over Application No. 10/838,112

MPEP § 804.1(B)(1), first paragraph, states in pertinent part:

"If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer."

The present Application was filed earlier than Application No. 10/838,112. All claims of Application No. 10/838,112 also currently remain rejected under at least 35 U.S.C. § 102(e) or 35 U.S.C. § 103(a). Therefore, Applicants respectfully request the Examiner withdraw the rejection and permit the present Application to issue as a patent without a terminal disclaimer to Application No. 10/838,112.

B. A Terminal Disclaimer is Not Required over Application No. 10/612,396

The present Application has the same filing date as Application No. 10/612,396. Application No. 10/612,396 has not yet been reviewed by the Office. Applicants submit that the present Application should be allowed to issue without a terminal disclaimer to Application No. 10/612,396. In the situation where the Applications share the same filing date, claim the same priority, neither is an "improvement" of the other, and one is in condition for allowance while the other has not yet been examined, the burden of a terminal disclaimer to obviate an obviousness-type double patenting rejection properly belongs on the Application awaiting examination, and not the Application otherwise in condition for allowance.

However, in order to expedite allowance of the present Application, Applicants are willing to provide a terminal disclaimer to Application No. 10/612,396 in response to an indication of allowability otherwise.

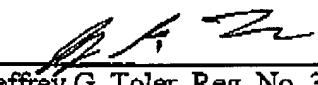
Applicants believe that Applicants have overcome the rejections without needing to address the substance of the rejection asserted by the Examiner. Thus, Applicants' silence or failure to contest the merit of any assertion made in the Office Action should not be construed as an admission or concession of any sort. Furthermore, nothing in the present Response should be construed as a limitation to the scope, validity, or meaning of any claims of any Application or issued Patent or of the validity of any assertion by the Office in regard to any Application or Issued Patent.

Applicants respectfully request the rejection be withdrawn and a Notice of Allowance issued. Such action is earnestly solicited.

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 50-2469.

Respectfully submitted,

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Date


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